



## State of Idaho

# DEPARTMENT OF WATER RESOURCES

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DIRK KEMPTHORNE  
Governor

KARL J. DREHER  
Director

December 23, 2002

Jerry Rigby  
RIGBY, THATCHER, ANDRUS et al  
P.O. Box 250  
25 North Second East  
Rexburg, ID 83440

RE: WILLIAMS CREEK - LEMHI COUNTY

*Jerry*  
Dear Mr. Rigby:

I have reviewed your letter to Bob Foster dated December 10, 2002, concerning the use of water from Williams Creek tributary to the Salmon River in Lemhi County and have discussed the matter with department staff.

The Department's electronic data base shows that 13 claims have been filed in the Snake River Basin Adjudication ("SRBA") using Right No. 75-27 as a basis for the claimed right. The total diversion rate claimed is 15.26 cfs including 0.08 cfs claimed by John A. Benzon under Claim No. 75-27L. The total diversion rate exceeds the 15.2 cfs established for Right No. 75-27 in the 1919 decree of Williams Creek. Under the present schedule for reviewing and issuing partial decrees for claims in Basin 75, the Department will begin field reviews this coming summer with a Director's Report to be issued in early 2005. As you know, the SRBA Court is the appropriate forum to ultimately determine the validity of the Benzon claim and other claims filed under this right.

Until a partial decree is issued by the SRBA Court, the Department will recognize and distribute water in accordance with the rights as decreed in 1919. Accordingly, the Watermaster of Water District 75B (Mr. George Rice) will be instructed to continue distributing 15.2 cfs to the point of diversion for this right. If the present dispute is whether Mr. Benzon has the right to take his claimed water from the Highline Ditch, the users, the ditch association or other entity in charge of maintaining and operating the ditch have the responsibility for determining who can convey water through and take water from the ditch. The Watermaster has the responsibility to distribute the decreed amount of water, in priority, to the headgate. If the nature of ownership or other right to use the ditch makes the lateral ditch users association provisions of Title 42, Chapter 13, Idaho Code, applicable, the owners should meet to elect a lateral manager to accomplish this distribution. If the applicable statutory provisions apply to the ditch and a lateral manager is not elected by the users, the Department can appoint a lateral manager if requested to do so. At that point, the Department will instruct the lateral

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manager concerning distribution of rights from the ditch.

The question would then become: If a lateral manager is appointed by the Department, would the Department instruct delivery to Claim 75-27? As a preliminary indication of the answer to this question, I would note that the Department seeks to maintain the status quo to allow the issues to be resolved by the SRBA Court. The lateral manager will be instructed to deliver water based on claims to recorded rights if the information available to the Department does not indicate that the claim is without merit and there is not evidence that the claimed use is directly and significantly injuring other valid water rights.

Because the validity of Mr. Benzon's adjudication claim will be reviewed as a part of the SRBA and because the immediate role that the Department has in this matter is to instruct the Watermaster to deliver Right No. 75-27, in priority, to the diversion point, the Department does not plan to schedule a separate or special hearing to resolve the disputed claim. The Department resists initiating an administrative proceeding that when appealed creates a conflicting or duplicative action to a matter already pending before the SRBA court.

If you have questions, please feel free to contact me.

Sincerely,



NORMAN C. YOUNG, Administrator  
Water Management Division

c: IDWR - Bob Foster  
IDWR - Harold Jones ✓  
IDWR - Tim Luke

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Department of Water Resources  
Eastern Region